In the High Court of Punjab and Haryana at Chandigarh

CWP No. 4932 of 1998
Date of decision:05.05.2008

Ram Chander and others

.....Petitioners

Versus

State of Punjab and another

.....Respondents

CWP No. 6695 of 1998

Melo Devi

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr.Amarjit Markan, Advocate,
for the petitioners.

None for the respondents.

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JUDGMENT

SABINA, J.

Vide this order, both the above mentioned writ petitions would be disposed of as in both these petitions the same notifications have been challenged. The facts are being taken from CWP No. 4932 of 1988.

The case of the petitioners, as stated in the writ petition, in brief, is that shops No. 1 to 17 as well as buildings behind these

shops were owned by the Punjab Public Works Department (Buildings and Roads Branch), Sangur. The petitioners were in possession out of these shops under Respondent No.2. A Notice under Section 36 of the Punjab Town Improvement Act 1922 (hereinafter referred to as 'the Act) was published in the Punjabi Tribune on 7.4.1984 (Annexure P-2) with regard to 0.76 Acres Area Development Scheme, known as Old Jail, Patiala Gate, Sangrur. Another notice under Section 40 (3) of the Act was published in Punjabi Tribune on 16.3.1987 (Annexure P-3). No hearing was afforded to the petitioners before publication of notification under Section 42 (1) of the Act on 26.5.1987. Hence, these writ petitions were filed for quashing the notice dated 7.4.1984 (Annexure P-2) and the notification dated 26.5.1987(Annexure P-4).

Notice was issued to respondent No.2 on 20.3.2008. Despite service, no body has appeared on behalf of respondent No.2.

I have heard learned counsel for the petitioners and have gone through the record available on the file carefully.

Learned counsel for the petitioners has argued that the notices under Sections 36(1) and 40(3) of the Act were issued on 7.4.1984 (Annexure P-2) and 16.3.1987 (Annexure P-3) respectively and, thereafter, notification under Section 42 of the Act was issued on 26.5.1987 (Annexure P-4). Since the notification under Section 42 of the Act had been issued after expiry of three years from the date of first publication of notice under

Section 36 of the Act, the same was liable to be quashed.

Section 42 of the Act is reproduced herein below:-

(1) The State Government shall notify the sanction of every scheme under this Act, and the trust shall forthwith proceed to execute such scheme, provided that it is not a deferred street scheme, development scheme, or expansion scheme and provided further that the requirements of Section 27 have been fulfilled.

(2) A notification under sub-section (1) in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned.

(Provided that no notification in respect of sanction of a scheme shall be issued after the expiry of the three years from the date of first publication of notice relating to that scheme under Section 36)

As per the proviso to Section 42 of the Act, no notification in respect of sanction of a scheme shall be issued after expiry of the three years from the date of first publication of notice relating to that scheme under Section 36 of the Act.

Notice under Section 36 of the Act was published in the newspaper on 7.4.1984 as is evident from Annexure P-2. Thereafter, notification under Section 42 of the Act was issued on 26.5.1987 (Annexure P-4). Thus, the notification under Section 42 of the Act was issued after the expiry of period of three years from the issuance of notice under Section 36 of the Act. Notification under Section 42

of the Act corresponds to a notification issued under Section 6 of the Land Acquisition Act. Hon'ble the Supreme Court in **Ashok Kumar and others** v. **State of Haryana and another**, (2007) 3 SCC 470 has held as under:-

> "We have noticed hereinbefore that the proviso appended to sub-section (1) of Section 6 is in the negative term. It is, therefore, mandatory in nature. Any declaration made after the expiry of one year from the date of the publication of the notification under sub-section (1) of Section 4 would be void and of no effect. An enabling provision has been made by reason of the Explanation appended thereto, but the same was done only for the purpose of extending the period of limitation and not for any other purpose. The purport and object of the provisions of the Act and in particular the proviso which had been inserted by Act 68 of 1984 and which came into force w.e.f. 24.9.1984 must be given its full effect. The said provision was inserted for the benefit of the owners of land. Such a statutory benefit, thus, cannot be taken away by a purported construction of an order of a Court which, in our opinion, is absolutely clear and explicit."

Since in the present case, notification under Section 42 of the Act has been issued after the expiry of period of three years from the date of issuance of notice under Section 36 of the Act, the same

is illegal and does not legally vest the property in the Improvement Trust. Accordingly, both these writ petitions are allowed. Notification dated 26.5.1987 (Annexure P-4) and notice dated 7.4.1984 (Anenxure P-2 are hereby quashed.

(SABINA)
JUDGE

May 05 , 2008
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